

April 19, 2006

Leroy Griffith
865 Thomsen Road
Lathrop, CA 95330

**RE: Your Request for Informal Assistance
Our File No. I-06-040**

This letter is in response to your request for advice regarding the revolving door provisions of the Political Reform Act (the "Act").¹ Since you have not provided any facts related to a specific appearance before or communication with your previous local government agency employer, we are treating your request as one for informal assistance.²

QUESTIONS

1. Does section 87406.3, which has an operative date of July 1, 2006, prohibit you from appearing before or communicating with the local governmental agency, for which you previously worked, prior to the operative date of the statute?
2. Does section 87406.3, which has an operative date of July 1, 2006, prohibit you from appearing before or communicating with the local governmental agency, for which you previously worked, on or after the operative date of the statute?

CONCLUSIONS

Section 87406.3 applies only to local government agency employees working for a local government agency on or after July 1, 2006. Since you resigned on February 13, 2006, section 87406.3 does not prohibit you from appearing before or communicating with the local government agency, for which you previously worked, prior to, on, or after July 1, 2006.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c), copy enclosed.)

FACTS

You previously worked as a city council member for the City of Lathrop. However, you resigned from this position on February 13, 2006. You currently would like to appear before or communicate with your former local government agency employer but are concerned with the applicability of section 87406.3 of the Act to your particular circumstances.

ANALYSIS

Section 87406.3 is a new “revolving door” provision of the Act. Essentially, the provision prohibits certain local government agency employees, including local elected officials, chief administrative officers of counties, city managers, or general managers or chief administrators of special districts, from appearing before or communicating with, for compensation, his or her former local government agency for the purpose of influencing certain administrative or legislative action or influencing certain proceedings for a period of one year. (Section 87406.3(a).) However, limiting the applicability of this new provision, the statute expressly mandates that the statute becomes operative on July 1, 2006. (Section 87406.3(e)).

Currently, as we understand the facts, you are no longer working for a local state government agency as you resigned from your council member position on February 13, 2006. As a former local government agency employee, you ask whether section 87406.3 creates any prohibition on appearances before or communications with your former local government agency employer prior to, on, or after the July 1, 2006 operative date of the statute.

“Under the California Constitution, a statute enacted at a regular session of the Legislature generally becomes effective on January 1 of the year following its enactment except where the statute is passed as an urgency measure and becomes effective sooner. (*People v. Henderson*, 107 Cal. App. 3d 475, 488 citing Cal. Constitution, article IV, section 8, subdivision (c)(1).) In some instances, the Legislature may provide for different effective and operative dates. (*Cline v. Lewis* (1917) 175 Cal. 315, 318; 57 Ops.Cal.Atty.Gen. 451, 454 (1974).) Additionally, “the courts have recognized the power of the Legislature to establish an operative date later than the effective date. [Citation.]” (*Estate of Martin* (1983) 150 Cal. App. 3d 1, 4; see also *Johnston v. Alexis* (1984) 153 Cal. App. 3d 33, 40.)

While it is clear that the Legislator has the power and authority to delay the operative date of a statute, to determine the statute’s applicability to your circumstances, we must interpret the language of the statute. The rules of statutory construction which guide the Commission’s interpretation are clearly expressed in *People v. McCaskey*, which provides:

“In construing a statute, the court’s primary goal is to find and give effect to the legislative intent or purpose in enacting the statute. [Citations.] The words and language of the statute are the primary source of legislative intent. The court must first look to the language of the statute to ascertain legislative intent, giving effect to the usual, ordinary import of the language. If the language is clear and unambiguous then the court need not engage in further construction; it merely applies the statute as expressed. [Citations.] If the court determines the statute is ambiguous, other rules of statutory construction must be used to interpret the legislative intent.

In construing the statute, the court must presume each word, phrase or provision in the statute was intended by the Legislature to have meaning and perform a useful function. [Citations.] Also, the statute should be construed as a whole and inconsistent parts of the statute should be harmonized if possible. [Citations.] If conflicting provisions of a statute cannot be harmonized, then, the provision that is positioned later in the statute normally controls the earlier provision. [Citations.] Furthermore, ‘Statutes must be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers -- one that is practical rather than technical, and that will lead to a wise policy rather than to mischief or absurdity.’ [Citation.]” (*People v. McCaskey* (1985) 170 Cal. App. 3d 411, 415.)

Using these rules of statutory construction several courts have concluded that a criminal statute could not be applied to those committing an offense after the effective date but prior to the operative date of the criminal statute. In *People v. McCaskey, supra*, the 5th District Court of Appeals found that the Legislature had properly provided for an operative date that was different from the effective date, that the inclusion of an operative date was not an “accident” and should not be deemed “surplusage,” that there was evidence that the Legislature intended to delay the implementation of the statute to give time for the courts to “get ready,” and that an earlier effective date could not be “harmonized” with a delayed operative date. (*Id.* at pp. 417-418.)

Similarly, in *People v. Palomar*, the 3rd District Court of Appeals also found that the Legislature’s use of a delayed operative date prevented applying a criminal statute to an offense committed after the effective date but prior to the operative date of a statute. Specifically, the court found that there was “no conflict to resolve” when a statute contained both a delayed operative date and an urgency clause. Indicating that the court was relying on a plain language interpretation of the delayed operative date, the court supported its conclusion by stating that “[t]he Legislature knows how to speak the language and they used it.” (*People v. Palomar* (1985) 171 Cal. App. 3d 131,134.) In addressing why the Legislature may have used a delayed operative date despite the urgency clause, the court stated that it was not for the court to “ascribe an intention” to everything the Legislature had done and pointed out that a later operative date allowed

persons and agencies affected by it to become aware of its existence and to comply with its terms. (*Id.* at pp. 134-135.)

Generally speaking California courts have consistently maintained that “[a]n enactment is a law on its effective date only in the sense that it cannot be changed except by legislative process; the rights of individuals under its provisions are not substantially affected until the provision operates as law.” (*People v. Henderson*, 107 Cal. App. 3d at 488.) In other words, “[T]he operative date is the date upon which the directives of the statute may be actually implemented. The effective date, then, is considered that date upon which the statute came into being as an existing law.” (*People v. McCaskey*, *supra*, at p. 416; see also *People v. Righthouse* (1937) 10 Cal. 2d 86, 88.)

Question 1 – From the above analysis, it is apparent that the Legislature used a delayed operative date purposefully and with reason. Furthermore, we are bound to conclude that the statute may not be implemented prior to the statute’s operative date. This plain language interpretation is clearly supported by the above mentioned California court decisions and we conclude that the use of a delayed operative date clearly expresses the Legislature’s intent that the statute should not be applied to any appearances or communications prior to July 1, 2006.

Question 2 – The question of whether the Commission may implement the statute to prohibit appearances and communication on or after July 1, 2006, by former local government agency employees, who left government employment prior to the operative date, is slightly more ambiguous. Arguably, the Commission would not be implementing the statute prior to the operative date if we interpreted the statute to bar appearances and communications on or after July 1, 2006, made by such former employees. However, this interpretation would undoubtedly lead to disorderly and unreasonable results by permitting such former employees to make appearances or communications for a short period of time only to prohibit the same types of appearances or communications shortly thereafter.

Such an interpretation could also create significant problems for former employees, who left governmental employment prior to July 1, 2006, by allowing them to make initial appearances or communications but prohibiting them from completing their dealings/interactions with their respective local government agencies. In considering this interpretation of section 87406.3, we are guided by a rule of statutory construction which provides that a statute should be given a “reasonable and common sense construction,” which is “practical rather than technical,” and which will lead to a “wise policy rather than to mischief or absurdity.” (*People v. McCaskey*, *supra*, at pp. 415-416.) Applying section 87406.3 to appearances and communications on or after July 1, 2006 by former employees, who left governmental employment prior to July 1, 2006, may create unreasonable and absurd results. For this reason, we can conclude that section 87406.3 does not apply to those former employees who leave governmental employment prior to July 1, 2006.

Furthermore, by using a delayed operative date, it is reasonable to conclude that the Legislature was attempting to ensure an orderly transition. (See *People v. Floyd* (2003) 31 Cal. 4th 179, 187.) Allowing former employees, who leave government employment prior to July 1, 2006, to make appearances or communications for a short period of time, only to prohibit the same types of appearances or communications on or after July 1, 2006, conflicts with the Legislature's apparent attempt to ensure an orderly transition. The conclusion that section 87406.3 does not prohibit appearances or communications by those former employees who leave government employment prior to July 1, 2006 is the conclusion most consistent with ensuring an orderly transition.

As a final note in our analysis, we also point out that the Commission faced a similar interpretation question after the enactment of section 87406.1 which created a similar one-year ban on any member and any former member of an air quality management district. In the *White-Brown* Advice Letter, No. I-94-395, we concluded that section 87406.1 applied only to persons who became a former board member on or after the operative date of the statute.³ Your question poses a similar question of interpretation as was presented in the *White-Brown* letter and we find no reason to interpret section 87406.3 any differently than section 87406.1, as related to former government employees who leave their governmental position prior to the operative date of the statute.

Sincerely,

Luisa Menchaca
General Counsel

By: Brian G. Lau
Counsel, Legal Division

Enclosure
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³ We point out that for purposes of section 87406.1 the operative date was identical to the effective date.